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THE FEDERAL COURTS.

SPEECH

OF

HON. GEORGE D. ROBINSON,

OF MASSACHUSETTS,

IN THE

HOUSE OF REPRESENTATIVES,

FEBRUARY 12, 1880.



WASHINGTON.

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S P E E C H
OF
H O N. G E O R G E D. R O B I N S O N.

The House having under consideration the bill (H. R. No. 3543) to amend sections 1, 2, 3, and 10 of an act to determine the jurisdiction of the circuit court of the United States, and for other purposes, approved March 3, 1875—

Mr. ROBINSON said:

Mr. SPEAKER: I hesitate somewhat to ask the attention of the House to-day to remarks upon this bill because it has been discussed by so many gentlemen that possibly the whole ground has been covered and all the objections to it have been stated or suggested by the gentlemen who have already addressed the House. I know that it is very difficult to secure the attention of this House when a debate has run for some days in the morning hour; but, Mr. Speaker, it becomes my duty to say some things different from the views uttered by gentlemen who have preceded me; and I could not, in justice to myself, be silent under such circumstances.

I agree, I say, at the outset, with many of the features of the proposed bill. I think it wise to turn back somewhat toward the legislation of 1789, founded on the constitutional provisions. I agree with many gentlemen there are provisions in the act of 1875 which are not called for at the present time; and I trust the future is far distant when the condition of the country will require their enforcement.

I shall not touch much at length on points which have been elaborated, and points in which I agree. I say at once that the right of removal of causes ought to be restricted as it is in this bill, mainly, to the defendant. I say that the plaintiff should not have, under ordinary circumstances, a right to elect his forum in a State, and afterward, when he finds defeat is hanging over him, at the last moment, to change his forum and take the United States court instead. It is wise to strike out that privilege for the plaintiff.

Again, I do not quite agree with the gentleman from Illinois [Mr. BARBER] who spoke yesterday in objection to the clause relating to promissory notes. If we enact the bill as it stands now, with that provision in it, we shall have returned to the law as it was before 1875, as it has been from 1789 down to 1875, and I agree that ought to be done. If we in ninety years of experience, under that legislation, found no practical difficulty, certainly I cannot see that in the experience of the last five years we have had justification for that departure from the old way.

I may as well say here that as this bill does not touch in general terms the powers given to the circuit courts in regard to patents, copyrights, civil rights, elective franchise, or criminal prosecutions,

I dismiss those features without comment, having no desire to take up the time of the House unnecessarily. But there are two other features in the bill to which I cannot give my approval for which I cannot vote. I shall speak of them in order. In the first place the clause raising the limit of jurisdiction from \$500 to \$2,000. That has not been commented on at length. The proposition is to change the law as it has been from 1789 to the present time. To this very day and hour the limit is \$500. Up to this time, through all the excitements consequent upon the war, upon the conflict of interests involved in the varied industries and business of this country, we have gone on under that rule, and we have come out of the darkness into the light of prosperity and success, and are on the onward march. There is no demand, then, that we should go up from \$500 to \$2,000.

Gentlemen will understand that it will not affect the number of causes which will come into the Supreme Court of the United States, because that right is limited by another statute, which fixes the amount at \$5,000. So with regard to the flow of business from the circuit court into the Supreme Court, it is utterly immaterial whether the amount fixed in the circuit court shall be \$500 or \$2,000, because neither one of itself gives the right of transfer to the Supreme Court. There can be no discussion about that.

And, on this question, what is the demand we should raise the limit from \$500 to \$2,000? What reason has been given for it in this debate? Said the gentleman from Texas [Mr. CULBERSON] who opened this debate, in speaking of the clause in regard to promissory notes:

The enlargement of the jurisdiction of those courts by the exception contained in the act of 1875 has operated to increase largely the business of the circuit and Supreme Courts of the United States, and no subject of litigation has contributed more to swell and overload the dockets of the courts than the jurisdiction over negotiable instruments held by assignees. This supply of business should be cut off and the holders of such evidences of debt remitted to the courts of the States, which now have concurrent jurisdiction.

And now mark these words, Mr. Speaker:

I do not think, Mr. Speaker, that if Congress had been devising a method by which to block up business in the circuit courts, to increase the burdens and expenses of litigation and at the same time prepare an easy mode by which the gravest frauds could be practiced upon the jurisdiction of the courts, it could have adopted a more successful one.

And I agree with him. And what is the logical conclusion of that? It is this plainly, that when you have taken away the right to go into the circuit court of the United States as the assignee of a chose in action, except foreign bills of exchange, you have then swept down that great mass of causes which have been accumulating in the circuit court. You have removed the great bulk, you have gone back to the condition of things in 1875. Gentlemen should not lose sight of this condition of things.

These causes have been very numerous, they have been burdensome to the country, and made so by the litigation in the United States courts, and I only dwell longer to say I heartily agree in the provision to strike that out of the law of 1875. And I say that when we have struck that out we have the relief that it is said we ought to have by striking it out. Strike it out, says the gentleman, because that provision has burdened the courts. I say strike it out and the burden drops from the courts.

Right here I will refer to the criticism made by the gentleman from Indiana [Mr. BAKER] a few days ago. I do not see him now in his seat. I do not wish to misrepresent him.

A MEMBER. He is present.

Mr. ROBINSON. I wish to say something in regard to his proposed amendment that the limit should be in some way more sharply defined. I have no objection that the language should be made so clear that no one can err. But while he states that he has known cases in which actions have been brought in the circuit court of the United States upon notes of the value of \$20 I must take issue with him. I cannot of course contradict his statement or question what he states to this House, but under the provisions of the law I fail to see how it can be accomplished.

Mr. BAKER rose.

Mr. ROBINSON. The gentleman will later have time to explain it.

Mr. BAKER rose.

Mr. ROBINSON. Not in my time. I will not be unfair with you.

Mr. BAKER. I trust I shall have some time to make some observations on that subject.

Mr. ROBINSON. If there is any abuse of this provision, if it be found that a party has removed a cause to the circuit court when he has no right to have it there, the gentleman and all other gentlemen know that the statute provides that the circuit court shall remand that cause.

Mr. BAKER. I said nothing about removal. I was talking about the institution of the suit originally in the Federal courts under the claim of \$500 damages where the real cause of action as it finally turned out amounted to only twenty or twenty-five dollars.

Mr. ROBINSON. The gentleman will find provisions to meet those difficulties in the statutes—provisions giving the court power to impose costs; yes, double costs, and even terms in addition to that upon a party who brings his case wrongfully in the circuit court of the United States.

Now, we have considered this one point thus far, how the business of the court will be diminished by the removal of this one provision from the act. Is there a demand we shall go further? Is there a demand that we shall have no United States courts that shall adjudicate upon the rights of parties, citizens of different States? I think not. Events are so fresh and so powerful in their instruction that it will not be found in this House that it has a standing here, that we are to dismiss the national power—dismiss the national courts and ignore their usefulness. We want to maintain them. We are here to-day with a Union more strongly cemented than ever before, and destined to be perpetual. That Union is not by the agreement of the States, but by the decree of the people of this great country, renewed, ratified, sanctified in the blood of the war. That is accomplished and with the United States court everywhere in this land I shall look in vain to find any gentleman rise and say he would banish them or shear them of their power. Nay, the lesson of the legislation in the last Congress and in this teaches us volumes as to the opinion of the people and the legislators here assembled. Why, in the Forty-fifth Congress we passed bills securing joint action, giving additional facilities in the United States courts, establishing new courts, making new districts, and divisions of districts—in how many States? Why, in Colorado, the District of Columbia, Florida, Indiana, Kansas, Michigan, Missouri, Nebraska, North Carolina, Ohio, and West Virginia. That in the Forty-fifth Congress. What is the record in the Forty-sixth? Gentlemen have only to consult the files of the House. Go to the Committee on the Judiciary and you will find there bills in the same direction for Ohio, Indiana, Louisiana, Iowa, Mississippi, Tennessee, Illinois, South Carolina, Texas, Kentucky, North Carolina,

Missouri, New York, and Kansas. Does that legislation show that the people tire of the pressure of the national power and the authority of the Federal courts? While I would not divulge the secrets of the consultation of the committee-room, yet I feel that I may say to this House that in the discussions and testimony before us in regard to the establishment of a circuit court in a certain State in this Union it appeared that the people wanted the United States court there because they had more confidence in it than they had in their State courts. And I say further, so that the credit may go where it is due, that this was in one of the Southern States of this Union.

I like that evidence. That is very gratifying. With this legislation accomplished and proposed and with that feeling prevailing I receive any such expression as that with cordiality. Let us have then this recognition of the United States power, and let us see to it that we do not here strive to strip it of its authority.

I need not enlarge, perhaps, upon the value and the interest of the cases that range from \$500 up to \$2,000 as that was so well put by the gentleman from Illinois [Mr. BARBER] yesterday. Are we making a court bill that will only avail to persons who are worth \$2,000? That is this bill. The people shall open the national courts; they shall pay for jurors and marshals and clerks and judges; they shall build court-houses here and there all over the broad land; you shall tax them for that burden; but this Congress undertakes to say that no man shall have the benefits of the judiciary of the United States—I speak in general terms—unless he has a cause of action that in value represents \$2,000. From 1789 for ninety years down we have been satisfied to let the people go in and out our national courts of justice for the sum of \$500. What wrong came to the people of this country from that?

Apply what I say now more particularly to natural persons, to individuals, and I think the force of the argument will be at once conceded. The other branch of the question I shall touch upon later. Take the loans of money that are made all over this country, and they are not alone from the East and the Middle States; they are made everywhere; transactions are growing up and multiplying every day that affect the entire community of the United States. Wrong, supremely wrong, is that man's view who thinks by this legislation he will only affect the State of Massachusetts, the State of Connecticut, the State of New York, and other of the old States of the East. Why, you gentlemen of the South will have transactions from \$500 to \$2,000, many of them, which you wish to have passed upon in the Federal courts of this country. You will be debarred whatever your cause of action. You gentlemen of the West, as I believe, in the vain dream to get some relief from what I think is a false delusion, are ready to throw down the benefits that you have under the provisions of the Constitution and the laws made in execution of the Constitution, and to cast the benefits of your trade and your commerce and your credit into oblivion, never to be regained.

There are, then, great questions involved in this bill. And I undertake to say, what is the experience of every man, that the individual who has only somewhere from \$500 to \$2,000 is a man who demands and should receive the protection of the United States courts quite as much as he who controls millions.

Mr. HAMMOND, of Georgia. Why limit it to \$500?

Mr. ROBINSON. The gentleman asks me why I limit it to \$500. I will reply by saying to him, why did our fathers limit it to \$500? And I suppose that is the question he wants to ask me. There is no

reason founded upon the Constitution. The Constitution says that the judicial power of the United States shall be vested in the Supreme Court and in such other inferior courts as Congress may establish. The Constitution further says that the judicial power shall extend to controversies between citizens of different States. That is the point here. When the founders of that Constitution, or many of them, met in the Congress of the United States, and when they gave us the act of 1789, for some reason, we know not why, they said it might be well to fix the limit at \$500. There is nothing that I can find in the debates of the House of Representatives of that period that gives the reason; and there is nothing to be found in any report of the debates of the Senate, because the debates of the Senate were then had with closed doors and in secrecy.

Mr. HAMMOND, of Georgia. Would not your argument destroy all limit as to amount?

Mr. ROBINSON. No, sir. My argument is not that we should go from \$500 down to \$1, and the House of Representatives has misunderstood me if they thought I said so. What I say is this, that it is clearly within the constitutional power of Congress to provide that suits from \$1 up between citizens of different States shall have cognizance in the Federal courts; and nobody will dispute that. From 1789 for ninety years the practice and experience of the country seemed to demonstrate the wisdom of the fathers in the legislation of 1789. I do not ask to go to the legitimate conclusion of distributing the power to the classes that have credits or demands of only a dollar. There is no stopping-place except in the discretion of Congress. This Congress has the discretion. I am not arguing the contrary, and gentlemen have not misunderstood me, I know. It is for us to say whether we think it wise and for the interest of the people that we should raise this limit from \$500 to \$2,000. That is what I am undertaking to meet. I say it is not wise; and if what I have said goes to sustain my assertion, I pass on, and leave it to other gentlemen to combat it. It is not that it is within the power of Congress merely, but that it is within its reasonable discretion as well, and I say no fact justifies the exercise of the discretion to give an enlarged limit.

Mr. WEAVER. Will the gentleman permit me to ask him a question?

Mr. ROBINSON. I do not like to yield, because my time is limited and I have a good deal more to say. I prefer that gentlemen should not take up my time.

Mr. WEAVER. I yielded to the gentleman when I had the floor, but I will not insist upon it.

Mr. ROBINSON. The gentleman was kind enough to yield to me, and I will now give one good turn for another, if his question is a short one.

Mr. WEAVER. Does not the gentleman see that at the time of the organization of the Government and the passage of the judiciary act of 1789, taking into consideration the population of the country and the relative amount of business, \$500 was a proper limit and brought a limited number of suits into the courts, and that the rapid increase of population and increase of business since that time would overload the courts if the \$500 limit was retained?

Mr. ROBINSON. That has been touched upon by the gentleman from Michigan, [Mr. WILLITS.] While perhaps it may be very easy for the gentleman to say that \$2,000 now does not represent more than \$500 represented some years ago—

Mr. WEAVER. I do not say that.

Mr. ROBINSON. In a certain sense that may be true. But I tell you that the man who has to-day but a thousand dollars, and wants his rights inquired into and determined, cares more about the \$1,000 of his own than for the \$1,000 that might have been in his grandfather's pocket. We must recollect that we are legislating for the people of to-day. Is it right and discreet that we should take away from the people of this country the privilege of going into the United States courts for the determination of suits involving sums between \$500 and \$2,000?

Mr. WEAVER. It is a necessity.

Mr. ROBINSON. I deny that it is a necessity, because when we have stricken out the provision in regard to promissory notes, the great bulk of causes will go out of the courts, as I have already argued. Again, we are multiplying United States courts and shall continue to do so as this country grows and prospers.

In regard to section 640 of the Revised Statutes, containing the provision in regard to corporations created by national laws, I will not dwell upon that at length, except to say that I can see no reason why a corporation created by authority of the United States should stand upon any better footing in this respect than any other corporation.

If a question arises under the Constitution or the laws of the United States, then that question should be interpreted and determined by the Supreme Court of the United States; and there are now many provisions of law for that purpose. I think that the amendment of the gentleman from Texas [Mr. CULBERSON] is substantially in the right direction; perhaps it is exactly so in terms.

If the limit is kept at \$500, as applied to all parties litigant, I am very clear that section 640 of the Revised Statutes should be repealed, and I hope the House will take that position. If it is said that it will be exceedingly troublesome to try in the United States courts the suits of national corporations involving small amounts, such as the destruction of a few rods of fence or the loss or damage of some article of property, then take away those cases and place those corporations on an equality with other suitors.

Right here it may be well for me to say that the criticism upon the action of the courts under the provision that allows an appeal to the Supreme Court when a question arises under the Constitution or the laws of the United States is not quite sound. Gentlemen will find by referring to 6 Otto, in the case cited yesterday by the gentleman from Missouri, [Mr. PHILIPS,] that the court says that only those questions can go to the Supreme Court which require the determination and construction of some provision of the Constitution of the United States or some law of the United States in order to arrive at a correct decision of the case. These corporations are not permitted to go there merely because they have been incorporated by authority of the United States.

I leave that branch of the subject, the question of the money limit, by asking gentlemen who hear me to consider for a moment that in this country the people are proportionately poor. Go into any State and you will find that the great mass of the people are utterly destitute of property. They pay a tax, if at all, upon the poll, and not upon property. If any of these persons shall accumulate the sum of \$1,000 by dint of labor and saving, his right to that everywhere throughout this land should be secure.

I come now to the other provision of the bill, and in order that we may have it before the House I ask the Clerk to read that portion of

the bill referring to corporations contained in the last clause of section 3.

The Clerk read as follows:

SEC. 3. That section 3 of said act be, and the same is hereby, amended so as to read as follows:

* * * * *

"That the circuit courts of the United States shall not take original cognizance of any suit of a civil nature, either at common law or in equity, between a corporation created or organized by or under the laws of any State and a citizen of any State in which such corporation at the time the cause of action accrued may have been carrying on any business authorized by the law creating it, except in like cases in which said courts are authorized by this act to take original cognizance of suits between citizens of the same State. Nor shall any such suit between such a corporation and a citizen or citizens of a State in which it may be doing business, be removed to any circuit court of the United States, except in like cases in which such removal is authorized by the foregoing provision in suits between citizens of the same States."

Mr. ROBINSON. I propose now to pass to the consideration of that feature of the bill which has just been read, and which is sometimes called the corporation clause of the bill. At the outset I must say that I cannot agree with some gentlemen who have stated that that is the great object to be accomplished. I cannot give that statement my assent and approval. Let us examine this question. In passing I want to say that the provision there does not save rights as to removal in pending suits or original actions. The gentleman in charge of the bill will, I presume, give proper consideration to this suggestion.

Again, it was not intended by the gentleman who offered this, as I understand, that corporations should be restricted as to suits for the enforcement of their rights under the patent or copyright laws. There can be no question that if this clause were adopted no corporation could go into the Federal court to enforce its rights under the patent or copyright laws, because this says "except as authorized by the provisions of this act," that is the act of 1875, which we are amending. Now the authority to go into the United States courts to enforce the patent and copyright laws is not found in the act of 1875, but in the Revised Statutes, section 629, clause 9.

Mr. NEW. That jurisdiction is exclusively in the circuit courts.

Mr. ROBINSON. Yes, sir; and we should not disturb it and for the reason that not only in the judgment of Congress heretofore but in the decisions of the Supreme Court there should prevail over this country one uniform line of decision and adjudication upon questions of this kind. I need not argue the matter. There are many cases in which corporations will become interested in patents and copyrights, and have rights under them.

Corporations have been held by the United States courts to be citizens of the States in which they are created. I need not read the decisions, because members of the House are familiar with this as a settled principle. In other words, to state it the other way, the court says that when a corporation comes into court the court will consider that cause as for or against the stockholders of that corporation, and for the purposes of jurisdiction they shall be conclusively presumed to be residents of the State in which the corporation was created. That is the position of the court. It has been the adjudication of the court from the earliest cases. I need not cite them. The same rule will apply to alien corporations; that is, corporations created in foreign countries—not only in foreign states, as we use the phrase.

The Constitution, in article 3, extends the judicial power to citizens of different States. Therefore, in its language and by the adjudica-

tion of the courts it extends its power to corporations, for they are citizens of the different States. Have they that right under the Constitution? It has been asserted, and is upheld by the Supreme Court, and of course it cannot be at the present time called in question.

If, then, the citizens of different States have this right in the United States courts—and when I say citizens, I use the term in view of the adjudications of the Supreme Court and include corporations—if the corporations of this country, then, have the same right as natural persons to go into the courts of the United States, is it within the power of Congress to take that right away from them? That is the question for our consideration. Can Congress deprive corporations of a right guaranteed to them by the Constitution as asserted and vindicated by the Supreme Court?

I wish to refer the House to an early case in 1 Wheaton, the case of *Martin vs. Hunter*, in which the court uses the following language:

Let this article be carefully weighed and considered. The language of this article throughout is manifestly designed to be mandatory upon the Legislature. Its obligatory force is so imperative that Congress could not, without a violation of its duty, have refused to carry it into operation. "The judicial power of the United States shall be vested" (not may be vested) "in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish." Could Congress have lawfully refused to create a Supreme Court, or vest in it constitutional jurisdiction?

The judicial power must therefore be vested in some court by Congress; and to suppose that it was not an obligation binding on them, but might, at their pleasure, be omitted or declined, is to suppose that, under the sanction of the Constitution, they might defeat the Constitution itself. A construction which would lead to such a result cannot be sound.

If, then, it is the duty of Congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language is imperative as to one part is imperative as to all. If it were otherwise, this anomaly would exist, that Congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the Constitution and thereby defeat the jurisdiction as to all; for the Constitution has not singled out any class on which Congress are bound to act in preference to others.

Mr. TUCKER. From what does the gentleman read?

Mr. ROBINSON. From 1 Wheaton.

Mr. TUCKER. Whose opinion?

Mr. ROBINSON. The opinion of Judge Story; and if the gentleman wants other authority to the same effect he will find in the opinion of Chief-Justice Marshall, in *Cohens vs. Virginia*, 6 Wheaton, which I will not take time to read, a reiteration of the same doctrine.

I say, then, that those constitutional provisions give to the citizens of the different States their rights in the Federal courts. I say again it is not within the constitutional power of Congress to make discriminations as to citizens in this matter. It has been taken as settled that the corporations of the States for purposes of jurisdiction are citizens of the States in which they are created. If citizens, they have the rights of all other citizens; and Congress is bound to secure those rights by legislation.

Can you discriminate? Why, in the famous *Dred Scott* decision, the Supreme Court did discriminate, and said that a negro was not a citizen within the meaning of the Constitution, nor entitled to sue in the circuit court of the United States? The nation paused and held its breath, and never recovered itself until after the bloody strife of the war, when was put into the Constitution that guarantee that no such doctrine should ever be repeated in this country; and to-day it is impossible for any Supreme Court to make that discrimination again.

That, I believe, is the only discrimination against the citizen that was ever attempted. It took us years to correct it; it cost blood and treasure. That is well settled. I am discussing simply the question of jurisdiction, not any other provision of the Constitution.

Discriminate! Can this Congress, can you here? I think no one will claim it. Can you say here that the corporations, for instance, of the State of New York, created there and doing business there, shall not be citizens of New York, but shall be citizens of the various States wherever they may go and transact business? No, indeed. That is not within the power of this Congress. Can you say that I, a citizen of Massachusetts, shall not be a citizen of Massachusetts when I want to come to the United States court, but shall be a citizen of Louisiana, or it may be of Ohio, or it may be of Illinois? Certainly not. Can you say by your legislation that the State of Massachusetts, for instance, shall have no rights in the circuit court, that the citizens of Massachusetts shall have no rights in the circuit court? Why, not at all.

"Citizens," say the constitutions of the different States, and that, I am happy to say, includes the people of the State of Massachusetts. Then you will not attempt that. And so this bill does not limit and say that directly, but seeks to gain by indirection what it has not the courage and the power to do directly. That is what it tries to do. If gentlemen believe it is in the power of Congress to legislate citizenship out of the different individuals, whether natural or artificial, that is recognized under the Constitution, let them meet that question fairly.

If Congress can exclude the citizens of a locality, or the citizens of one color, or the citizens of one occupation, or the citizens of certain classes of wealth or industry, surely it can exclude any other citizens. If you can, in this bill and under our Constitution, declare that the citizens, or any portion of them, in this country, because they act in their corporate capacity, shall lose their rights in the Federal courts, it is but the next step to legislate that the man who is engaged in rolling iron, or in the manufacture of cotton or of woolen goods, or is a banker or "bloated bondholder," shall not have any rights in the Federal courts. There is no stop between them.

"Well, but this bill," it will be said, "does not declare that they shall not be citizens." And it may be said that this Congress certainly has the power to decline to exercise the whole of its jurisdiction; that the Supreme Court has recognized that as within the discretion and power of Congress. So the court has, but I ask you to observe that the court has never given any countenance, except in the case I have referred to, that upon this matter of jurisdiction there may be any discrimination as to citizens. There may be a discrimination as to subject-matter, but not as to citizens.

The gentleman from Indiana [Mr. NEW] has cited *Sheldon vs. Sill*, 8 Howard, 441, and other cases, in justification, as he seems to believe, for the provision now under discussion. But all those cases are in point only to sustain the authority of Congress to exercise its discretion upon the subject-matter or amount in controversy, not to discriminate against any citizen. The distinction is very broad, and in recognition of it my argument is made. The opinions of courts have no binding force whatever, except upon the precise points in issue.

Corporations are citizens for all purposes under the Constitution and laws of the United States relating to the Federal courts, and as such have equal rights. It is not material in this consideration that

they are declared not to be citizens under other clauses of the Constitution and for different purposes.

The SPEAKER *pro tempore*, (Mr. HARRIS, of Virginia, in the chair.) The gentleman's time has expired.

Mr. ROBINSON. I think not, Mr. Speaker; but that I am to take up the whole morning hour.

The SPEAKER *pro tempore*. The gentleman had twenty minutes yesterday and was entitled only to forty minutes this morning.

Mr. WILLITS. I hope by unanimous consent the gentleman will be permitted to proceed until he concludes his speech.

Mr. WAIT. I move that the gentleman be allowed to go on and finish his remarks.

Mr. ROBINSON. It will be agreeable, I think, to the gentleman from Kentucky who is to follow me, to begin to-morrow, rather than for the few minutes remaining of the morning hour.

Mr. TUCKER. I move that the gentleman be allowed to go on for the remainder of the morning hour.

Several MEMBERS. Go on; go on.

There was no objection, and it was ordered accordingly.

Mr. ROBINSON. Mr. Speaker, I am under obligation to the House for its courtesy, and I will not trespass on it. I was saying that this bill did not do its work directly, but sought to do it indirectly. What does this bill say? Not flatly and plainly, as some perhaps would have it, that these corporations shall forfeit their citizenship; but it says we will close the doors of the United States courts against this class of citizens. Is that any more manly? Is that any more honorable? Is that any more within the constitutional power of Congress? Shut your doors! We tore down the placard "no negroes here;" shall we now write over the vestibule "no corporations can be heard." Why, if you say the circuit court shall not consider the causes which may come from one class of citizens, you may go on to classify your litigation to suit the prevailing temper of Congress, and you may in this Congress provide the circuit court shall not hear a black man, and in the next place you may provide the black man may be heard but no gentleman from South Carolina shall be heard. I need not enlarge further. I have submitted the point with confidence in its soundness.

And I go further. Whether or not it is sound in law, it is eminently fair and wise in comity and statesmanship. Let us look at the status of this matter. What are corporations? Creations of States—local creatures born of the parent States. They have their home in the States of their creation, and they are hedged and bounded in their power by the territorial limits of the States creating them. Why, the gentleman from Iowa [Mr. WEAVER] wandered far when he said, the other day, in these words:

Take for illustration a railroad corporation. It is organized, perhaps, under the law of Massachusetts. It stretches its iron arms westward until it reaches the Missouri River, passing through the great States of New York, Pennsylvania, Ohio, Indiana, Illinois, Iowa, and perhaps others. It enters these States, and by the right of eminent domain condemns the property of the citizen, proceeds to build and lay the foundation of a colossal fortune. It builds its road and occupies the territory, and proposes to occupy for all future time.

Why, Mr. Speaker, that is eloquence, but it is not law. I want to say, and the gentleman knows well, that no Massachusetts corporation can go into Iowa and exercise the right of eminent domain except with the authority of the great State of Iowa.

Mr. WEAVER. Let me make this remark. They do do it by indirection.

Mr. ROBINSON. I cannot yield.

Mr. WEAVER. It will not come out of your time, and the gentleman should not misrepresent me.

Mr. ROBINSON. It will come out of my time, as the morning hour has nearly expired.

No corporation, as we all know, can go outside of the limits of its State and enter another State, except by the authority of the State which it will enter, whatever may be its business. Eminent domain! Why, that is the high prerogative of the sovereignty of the State which holds the territory, and that State may, in its discretion, part with it or apportion it to such objects and purposes as commend themselves to its best judgment. So Legislatures give to great corporations organized for the public benefit, as the Legislatures believe, the right to take land. I need not defend railroad corporations; they have their defenders in this House. Gentlemen who have practiced at the bar for years as attorneys of corporations know that, sentiment aside, there are rights on one side as well as rights on the other. Railroad corporations! Why, you take the great lines across this country; take them as they come to this capital; take, for instance, the Philadelphia, Wilmington and Baltimore Railroad. Pennsylvania, Delaware, and Maryland all joined to give consolidation, force, and vigor to that corporation; and the State of Pennsylvania, by its supreme court, said in a case of that character that when the Legislatures of the different States had authorized a consolidation of that kind, it was not to be taken as an act of one State with the corporation alone, but was in the nature of a compact; and that the different States were bound to maintain that compact, not only with respect to the corporation but with respect to each other. You rejoice, some of you, in the great line that will take you to Chicago, if that will be effected by consolidation. The State of Iowa has but a single home corporation that crosses or runs within its border, I understand. And how came the great ones there? By the act of the Legislature of Iowa, by its consolidation statute, which said to the corporations approaching its borders, "Come, we want the convenience and the power and the facilities and value of your combined line."

It has been well said here that this country, however much some men may talk against the corporation power, cannot get along without associated capital. No individual alone can undertake these enterprises. No man would dare to risk his fortune in such great undertakings. The people, wherever they are, who have been living hundreds of miles out of the sound of the locomotive's shriek will always welcome the iron horse when he comes into their locality. Why, sir, in these discussions about United States courts, how ready gentlemen have been to tell us how many railroads they have running to this and that town, and how the people are benefited and the courts accommodated!

I pass on. Savings banks and trust companies are organized in many of the States. They are authorized to loan their funds, many of them, outside of the borders of the State in which they exist. That is not so in Massachusetts, but it is so in many States. Are savings banks rich corporations? They are the trust companies, the trust establishments of the poor people of the States. You examine their accounts, and you find them, from \$1 up to \$1,000, composed of the slow and painful earnings of the people in the shops and the mills or on the farms of the States that have fostered those institutions. Suppose they lend their funds in the West or the South; suppose they lend them in New York or elsewhere; I say they ought to

have the rights of the citizens who have saved their money and intrusted them to the officers of those corporations. In nearly all cases the officers of those corporations serve without pay.

But there are foreign insurance companies; gentleman say, they are the trouble. Well, let us see. Is that real or is it fancied? How come the foreign insurance companies in any State? I mean the foreign insurance companies of this country, foreign as to the State in which they do business. Unless a State by express act or by implied recognition allows an insurance company to do business within its borders it has no right there—I mean a foreign insurance company. The States have regulated that. Ohio has its law; Indiana has its law; Wisconsin, Michigan, Massachusetts, New York, Connecticut, and nearly all the other States make provisions for those corporations to come. They provide that they shall come in and make certain deposits; that they shall have an agent upon whom process shall be served; they make such provisions as they choose, and the corporation must abide by those conditions, provided that they are not repugnant to the Constitution and laws of the United States. When the State of Wisconsin exacted from a foreign insurance company as a condition of its doing business in that State an agreement that it would not remove any cause to the circuit court of the United States the Supreme Court of the United States put its hand on that legislation and said, that is repugnant to the Constitution and laws of the United States and the company may remove its cause. I refer to 20 Wall., 445, *Home Insurance Company vs. Morse*. But when the same State of Wisconsin, as the next step, revoked the license of a foreign insurance company for a similar act and that question came to the Supreme Court of the United States, the court said, Wisconsin has the power to give license and she has the power to revoke it. I cite *Doyle vs. Continental Insurance Company*, 4 Otto, 535.

Other States, as Missouri, have attempted legislation perhaps more dangerous. Indiana has gone a step further. Less than a year ago, in March last, the State of Indiana passed a law in which it provided that if a foreign insurance company shall remove a cause from the State court into the Federal court under the United States Constitution and laws it shall forfeit its right to its real estate and to its liens and to its contracts, and that the contract, while not binding upon the individual unless he chooses to have it, shall be binding upon the corporation. That is Indiana legislation in this same line. The act is as follows:

An act touching foreign corporations, and providing that certain acts thereof shall work forfeiture.

[Approved March 15, 1879.]

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That every foreign corporation now doing or transacting, or that shall hereafter do or transact any business in this State, or acquire any right, title, interest in, or lien upon real estate in this State, that shall transfer or cause to be transferred from any court of this State to any court of the United States, save by regular course of appeal, after trial in the State courts, any action commenced by or against such corporation in any court of this State, by or against any citizen or resident thereof, or that shall commence in any court of the United States in this State on any contract made in this State, or liability accrued therein, any suit or action against any citizen or resident of the State of Indiana, shall thereby forfeit all right and authority to do or transact business in this State, or hold real property or liens thereon, and all contracts between such corporations and citizens, or residents of this State, made after the passage of this act, shall be rendered void, as in favor of such corporation, but enforceable by such citizen at his election.

SEC. 2. The provisions of this act shall be, and the same are hereby, made conditions upon which such corporations may be authorized to do business in this State, or hold title to or liens on real estate therein.

SEC. 3. There being now no law of this State covering the provisions of this act, therefore an emergency exists, and the same shall be in force from and after its passage.

The Legislature of Indiana considered there was such a public emergency that they had that act by its terms take effect on its passage. The very instant the governor of the great State of Indiana wrote his sign-manual upon that act every corporation from another State doing business in Indiana was subject to that legislation. Is it constitutional? I think not. And is there any cause for wonder that any attempt to remit citizens of other States to the courts of Indiana controlled by the sentiments and policy expressed in such legislation is viewed with alarm?

I have only to say a word or two further and then I will close. I have said the States may exclude corporations. We all know that. And with such power in the States let their Legislatures exercise it as they may deem best. Surely Congress should not, by any policy that is unwise or unsound, attempt to impose conditions or restrictions that the States do not establish. Again, money may be loaned the towns and cities and counties throughout this country. And is it not fresh in your recollection that a good many of your towns and cities have seen fit to deny the obligation of loans made to them? And was it not best and right that the citizen of another State, natural or artificial, whether from the West, the South, or the East, should have the right to go into the United States court to try the question whether a certain county should pay its debts rather than go into the courts of that county? This bill says if you lend money to the town or city or county, and you are a non-resident of that State and a corporation, you shall seek your remedy against the town or city or county in its own court at the hands of its own people, who are to pay the taxes and take the law from the judges who sit on the bench elected by the votes of the people who pay the taxes, voted for generally by the defendants in the cases, and who expect to be elected next time, sometimes because they make this decision or the other that may suit the popular whim.

I will not apply that to the West only. In all parts of the country there occur times of excitement. You say that if a corporation shall go into a State to do business, let it abide by the law of the people where it seeks to do business. Yes, gentlemen, in times of peace and harmony and when there is no prejudice or excitement. But no State is always free from that. Massachusetts has had its periods of jealousy and prejudice; and there have been times in my recollection when some gentlemen of the South, if they belonged to incorporated companies, could not have gone to Massachusetts and submitted their cases to the State juries and obtained the judgments that they ought to have obtained on the law and the facts.

And in the West there have been granger laws and granger excitements that have led people to commit enormities in legislation and extravagances in practice; and in the South—why, sir, history is too full for me to particularize.

Capital is needed to restore the waste places of the South and to build up the undeveloped West; it must flow largely from the older States of the East and from foreign lands. But it will not be risked in the perils of sectional bitterness, narrow prejudices, or local indifference to integrity and honor.

I say, then, let us stand by the national courts; let us preserve their power. Let us take out of those courts the causes of litigation that have multiplied and burdened the court and weighed it down,

so that it may transact its business. But let us stand upon the legislation which the country has prospered under, which it has approved by its ninety years of life. Let us give our Constitution that construction which the fathers gave it that we may indeed be not merely a community of States. Let us no more in practice talk of State rights as against the power of the Government or against the rights of the citizens of the nation. Let us have a national power, national rights; and let us have individual interests and rights recognized under the Constitution and the laws of this great Government.

I am under great obligations to the House for its kind attention.